?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

%DATED: 29.10.2018

*CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

+W.P.(MD) Nos.19936 of 2017, 7595 and 21485 of 2018
and
WMP(MD)No.7225 of 2018
WP(MD)No.19936 of 2017:

#Muthu ... Petitioner
vs.

$1.The District Collector,
Pudukottai District, Pudukottai.
2.The Assistant Director of Geology & Mining,
Collectorate, Pudukottai District.
3.The Superintendant of Police,
Pudukottai District.
4.The Inspector of Police,
Aranthangi Police Station, Pudukottai District.
5.Ramanathan
6.Govindhan
7.Mennappan
8.Jeganathan
9.Pandi ... Respondents
Petition filed under Article 226 of the Constitution of India issue a
writ of Mandamus directing the respondents 1 to 4 to initiate adequate action
forbearing the respondents 5 to 9 from quarrying sand in river Vellar
Survey No.316 Subramaniyapuram Village, Edayar Panchayat, Aranthangi Taluk,
Pudukottai District.
!For Petitioner : Mr.N.Balakrishnan
^For R1 to R4 : Mr.B.Pugalendhi
Additional Advocate General
assisted by Mr.A.K.Baskarapandian
Special Government Pleader
WP(MD)No.7595 of 2018:
Mahalingam ... Petitioner
vs.

1.The Secretary to Government,
Public Works Department,
Secretariat, Chennai.
2.The Commissioner of Geology and Mining,
Guindy, Chennai ? 32.
3.The District Collector,

Pudukottai District, Pudukottai.
4.The Revenue Divisional Officer,
Aranthangi, Pudukottai District.
5.The Assistant Director of Geology & Mining,
Pudukottai District, Pudukottai.
6.The Tahsildar,
Aranthangai Taluk,
Pudukottai District.
7.The Assistant Executive Engineer,
South Vellaru Basin Division,
Pudukottai District.
8.The State of Tamil Nadu,
rep. by the Secretary,
Home Department,
Fort St. George, Chennai.
(R8 suo motu impleaded vide order
dated 24.09.2018)
9.K.S.Ramesh Babu
10.K.Subramanian
11.Kalidasan
12.P.Rajan
13.Saravanan
14.Natarajan
15.K.Vayakatuchamy
(Respondents 9 to 15 are impleaded
vide order dated 25.10.2018) ... Respondents
Petition filed under Article 226 of the Constitution of India issue a
Writ of Mandamus directing the respondents to take effective steps to prevent
the illegal Sand Mining in Vellaru river in Pudukottai District by
considering the petitioner-s representations dated 22.09.2017 and 03.01.2018.
For Petitioner : Mr.T.Lajapathy Roy
for Mr.T.Lenin Kumar
For R1 to R4 : Mr.B.Pugalendhi
Additional Advocate General
assisted by Mr.A.K.Baskarapandian
Special Government Pleader
For R9 to R12 : Mr.R.Anand
For R13 & R14 : Mr.M.Alagarsamy
For R15 : Mr.M.Saravanakumar

WP(MD)No.21485 of of 2018:
A.Ugin Prabu ... Petitioner
vs.
1.The Chief Secretary,
Government of Tamil Nadu,
Fort St. George, Chennai ? 600 009.

2.The Secretary to Government of Tamil Nadu,
Public Works Department,
Fort St. George, Chennai ? 600 009.

3.The Revenue Secretary to Government of Tamil Nadu,
Revenue Department,
Fort St. George, Chennai ? 600 009.
4.The Secretary to Government of Tamil Nadu,
Highwats Department,
Fort St. George, Chennai ? 600 009.
5.The Commissioner,
Geology and Mining Department,
Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai ? 600 032.
6.The District Collector,
Thanjavur District, Thanjavur. ... Respondents

Petition filed under Article 226 of the Constitution of India issue a writ of Mandamus directing the respondents prohibiting the illegal sand quarrying operation in Agniyar from Edayathi to Rajamadam in Pattukkottai Taluk of Thanjavur District except under due process of law.

For Petitioner : Mr.V.Sasikumar
For Respondents : Mr.B.Pugalendhi
Additional Advocate General
assisted by Mr.A.K.Baskarapandian
Special Government Pleader

:COMMON ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]
WP(MD)No.19939 of 2017 has been filed for taking adequate action in respect of illegal sand quarrying in the river. WP(MD)No.7595 of 2018 has been filed seeking a comprehensive prayer against the respondents to take effective steps to prevent illegal sand mining.
2.Taking note of the prevailing situation, we have passed the following order on 24.09.2018:
?We have perused the report filed by the third respondent District Collector, Pudukkottai. From the submissions made on both sides, we are satisfied that not only in the place, which is subject matter of writ petition, but also in the entire State indiscriminately mining is going on illegally by using vehicles and bullock carts. The action taken is far and few. We are afraid to say that even this is mainly restricted to only imposing of fine. The vehicles involved are either released by the official respondents or by the Courts. Every thing has become a part of the routine transaction. The action taken so far has not yielded any result. Sand in the present form takes thousands of years. Removal of the sand will lead to the destruction of the rivers. At this speed, we may lose the rivers once for all. A report of NITI Aayog ~ a Government Think Tank, indicates that by 2050 there will not be any water for the entire State. 21 cities including Chennai will run out of ground water affecting about 100 million people. The aforesaid situation is the stock reality bourne out of the greed of the man. May be, the generation next might see water only in bottle. Day in and day out we are forced to deal with such cases. However, illegal mining goes on

unchecked under our nose. This is the reality.
2.Taking note of the aforesaid situation, we direct the State of Tamil Nadu, represented by the Secretary, Home Department, Fort St. George, Chennai impleaded suo motu as 8th respondent, to see to it that appropriate steps are taken by placing the responsibility on the revenue officials on ground. We further direct all the District Collectors in the entire State not to release any vehicle, which is involved in illegal mining of sand until further orders from this Court. In case of involvement of bullock carts, the carts will have to be retained while releasing the bulls. We also make it clear that no Courts in the State shall entertain any request from the owners of the vehicles involved in illegal sand mining. We may note registering Criminal cases made little impact which cases ending in acquittal and languishing without any progress.
3.Post the matter for further hearing on 11.10.2018. The learned Special Government Pleader is directed to inform the order of this Court to all the District Collectors.
4.Thus, Considering the seriousness of the situation, we deem it appropriate to implead the State of Tamil Nadu, represented by the Secretary, Home Department, Fort St. George, Chennai suo motu as 8th respondent. The learned Special Government Pleader takes notice for the 8th respondent. The 8th respondent is to inform the Court of any action plan to deal with the situation.

3.Thereafter, further order was passed on 12.10.2018, which reads as under:
?Learned Special Government Pleader appearing for the official respondents would submit that the order of this Court dated 24.09.2018 has been complied with in letter and spirit.
2.Some of the learned counsels seeks further time to file their affidavits along with documents. Therefore, the matter stands adjourned to 24.10.2018 at 2.15 p.m. Post the matter along with W.P.(MD) No.18606 of 2018 and 20648 of 2017.
3.In the meanwhile any application or writ petition is filed seeking release of the vehicles involved in illegal mining operations, it shall be taken up only by the Division Bench both at this Bench as well as at Principal Seat. Insofar as this Bench is concerned, petitions/applications can be filed before the I Division Bench and insofar the Principal Seat is concerned appropriate Bench may be decided by My Lord the Hon-ble Chief Justice.?

4.Today arguments have been addressed by the counsels appearing for the parties and the learned Additional Advocate General.

5.Now, the issue which has arisen for consideration is as to whether Rule 36~A of the Tamil Nadu Minor Mineral Concession Rules, 1959 still holds the field, notwithstanding the amendment made to Section 21 of the Central Act. We may note that the State Government draws its power from Section 23~C of the Central Act (hereinafter referred to as -Act-) along with Section 15.
6.Section 4(1~A) of the Act prohibits anyone to deal with any mineral, otherwise in accordance with the Acts and Rules. For the violation of the above, action is provided by way of penalty under Section 21. Though Section

21 speaks about penalties, it also deals with the manner in which a prosecution can be launched for contravention of the provisions of the Act with specific reference to Section 4(1~A). Therefore, power of adjudicating a contravention is no longer available with the State authorities, but only with the Court.

7.Section 21(4) of the Act deals with the power to seize any vehicle, equipment or tool involved in illicit mining by an officer or an authority specially empowered. As per Section 21(4~A), such a vehicle, equipment, tool or mineral shall be liable to be confiscated by the order of the Court, competent to take cognizance. We may note Section 21(4~A) of the Act consciously uses the word -shall- while dealing with confiscation. Therefore, if the Court concerned is of the view that any vehicle, mineral, tool, equipment or any other things seized, is involved with any violation, then, it has to be followed by confiscation and disposal.

8.Section 30~B of the Act specifies the Court which can take cognizance. Therefore, whenever a vehicle is seized for contravention and whenever mineral is also seized, the only option open to the authority is to file a private complaint as mandated under Section 30~B. Therefore, there is no power or authority that lies with the revenue officials to release the vehicle after seizure. There is a difference between a power exercised for seizure and confiscation. While the statute provides for power to seize by a revenue authority, it does not provide so, for confiscation, which is specifically assigned to the jurisdictional Court, which assumes it on a complaint made by an authorised officer. As stated above, this position applied to all instruments, machineries, vehicle and the mineral.

9.Section 21 of the Act came to be inserted by Act 10 of 2015. Rule 36(A) has been in statute prior to that. This Rule has been introduced in exercise of the power under Section 15 r/w 23~C of the Act. The moment Section 21 has come into being, Rule 36~A lose its significance. In fact, it does not have any existence thereafter. After all, between rule which has been enacted in pursuant to the rule making power and substantive provision of the Act, the latter one would certainly prevail, for which, there will not be any quarrel. Therefore, in no case, any revenue official can invoke Rule 36~A, for the purpose of release of mineral, tool, machinery, instrument, vehicle etc.,

10.Section 23~A of the Act speaks about compounding of offences. This provision has been in existence for quite some time. By implied overruling, this provision also loses its force. When once power of adjudication lies only with the Court, there is no way, the revenue officials can compound the same and thereafter, make a complaint to the Court. This is also for the reason that the power of confiscation is also not available to such authority. In other words, seizure is only for the purpose of assuming jurisdiction for making complaint before the jurisdictional Court. Once an authority seizes the vehicle, then, there is no role to be played with respect to the release, which is specifically assigned to the Court alone. Therefore, there is no way, a power of compounding can be exercised, since the very power of confiscation followed by adjudication itself is not

available to an authority, other than the Court.

11.Having come to the aforesaid conclusion, we deem it appropriate to direct all the revenue officials to make a complaint after the seizure to the jurisdictional Court. A complaint has to be made immediately after seizure, preferably, within a period of one week. Thereafter, appropriate application can be made for confiscation, which might include a vehicle, said to have been involved.

12.As held by the Hon-ble Apex Court, which dictum is followed by this Court, there is no bar for the police to register a case for the offence under Section 379 IPC along with the offence under the Mines and Minerals (Development and Regulation) Act, 1957. Whenever an offence is registered under Section 379 IPC, it will not take away the power of the revenue officials to give a private complaint. As this position is settled, we direct the revenue officials to inform the police about the seizure made and in the same way, as and when a case is registered under Section 379 IPC, the police concerned shall inform it to the revenue officials. Therefore, a complaint has to be made by the revenue officials before the jurisdictional Court and on information, case has to be registered by the jurisdictional police. This procedure will have to be followed strictly.

13.As recorded earlier, illegal mining is carrying on unabatedly under the very nose of the revenue officials, which can be taken judicial note of by this Court with a fond hope that the same can be controlled in future. Hence, we issue the following directions:

(i)The District Level Task Forces and Taluk Level Task Forces, constituted pursuant to the order passed in WP(MD)No.9806 of 2018 should follow the G.O.(Ms)No.135 Industries (MMA.1) Department, dated 13.11.2009 in letter and spirit.

(ii)As stated in the above said Government Order, periodical meetings will have to be held which is inclusive of action taken/to be taken for the illicit mining.

(iii)Steps will have to be taken for dereliction of the duty by the concerned officials.

(iv)Taluk Level Task Forces shall also comply with the directions issued in the Government Order by making frequent surprise checks and submit their report to the District Level Task Forces.

(v)The Taluk Level Task Forces shall meet every fortnight as mandated in the Government Order.

(vi)The responsibility fixed in the Government Order will have to be strictly construed and action will have to be taken against the erring Village Administrative Officer, Tahsildar, Officer in~charge of Department of Geology and Mining at District Level.

(vii)Action taken report will have to be sent by the District Collector concerned for the purpose of taking necessary action. The District Collector concerned shall take appropriate departmental action by himself as per the Rules provided so.

(viii)Separate records will have to be maintained by the Village Administrative Officer, Tahsildar and Officer in~charge of the Department of Geology and Mining with respect to the cases involving illicit mining.

(ix)As and when illicit mining is reported, the same will be recorded

in the records.
(x)The respective District Collectors will have to ensure by making vide publicity of phone particulars assigned to the District Level Task Forces and the Talk Level Task Forces, so that, the general public can give their complaints. There should be affixture or display of the phone particulars in the Collectorate, Taluk office, Office of Deputy Director and Assistant Director of Geology and Mining and that of the Village Administrative Officer.
(xi)Complainant will have to be intimated on the action taken within a period of one week from the date of receipt of the complaint. A complaint shall also be received even when made through phone calls.
(xii)Complaints by an authorised person under Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 are to be made immediately and not later than one week from the date of seizure.
(xiii)Whenever, a final report is filed for the offence under Section 379 IPC by the jurisdictional police before the jurisdictional Magistrate, the same shall also be committed to the Special Court. This is for the reason that it would be appropriate to deal with both the police case and the private complaint by the same Court and in order to avoid any possible conflict.
(xiv)The revenue officials at the time of seizure can issue a memo to the person in~charge of the vehicle, mineral among other things, indicating the seizure made, along with the date and time.
(xv)In so far as the seized vehicles are concerned, they shall be produced before the concerned Magistrate Court by the revenue authorities at the time of filing their respective complaints.
(xvi)Any application for release of vehicle etc., can only be filed before the Special Court alone.
(xvii)Any violation of the above would constitute a contempt of the order passed by this Court, for which, appropriate application can either be filed before the First Bench of this Court or any other Bench as per the direction of the Hon-ble Chief Justice.

14.With the above observations and directions, these writ petitions are disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Note : Registry is directed to mark a copy of this order to all the Magistrates in the State of Tamil Nadu.
To
1.The Secretary,
Industries Department,
Government of Tamil Nadu,
Fort St.George, Chennai.

2.All the District Collectors,
State of Tamil Nadu.

3.All the Superintendant of Police,
State of Tamil Nadu.

4.The Assistant Director of Geology & Mining,
Collectorate, Pudukottai District.

5.The Superintendant of Police,
Pudukottai District.

6.The Inspector of Police,
Aranthangi Police Station,
Pudukottai District.